DETAILED ACTION

Status of Claims

As a result of the filing dated 2/12/2007, claims 19, 26-36 and 38 are canceled. Claims 17, 20, and 37 are amended. Finally, Claims 17, 20-25, 37, and 39 are currently pending.

Finality of Action

The finality of previous action is withdrawn after consideration of Applicants arguments with regards to the 102 rejection against claim 25. It is noted that the action was made final, as is this action; because the amendment to the claims dated 2/12/2007 removed the general class of compounds from claim 17 and added a Markush group of specific drugs, formerly in claim 19. But in moving these limitations, the derivatives and isomers were removed to overcome rejections in the action dated 12/04/2006. Therefore, finality is proper when the amendment requires the Examiner to make additional rejections which were not necessary prior to the amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 20-24, 37, and 39 rejected under 35 U.S.C. 102(b) as being anticipated by BELANGER et al (US 4,863,958).

17. A method of inhibiting the secretion of IgE-dependent histamine-releasing factor (HRF) in a patient, wherein the method comprises administering to the patient an effective amount of a benzimidazole compound selected from the group consisting of omeprazole, lansoprazole, pantoprazole, and rabeprazole.

BELANGER et al teaches the use of omeprazole (column 35, lines 64-66) for the treatment of asthma and anaphylaxis (column 1 lines 18-22, column 1 lines 30-32, and claim 4). Asthma is a disease that can be triggered by the secretion of IgE-dependent histamine-releasing factor (see instant claim 22); therefore, by treating asthma, the method of inhibiting IgE-dependent histamine-releasing factor is inherently practiced.

20. The method of claim -1-9 17, wherein the method comprises the additional administration of at least one of fenoctimine, oleic acid, catechin, scopadulciol, pentagalloyl glucose, bufalin, bafilomycin and concanamycin.

BELANGER et al teaches the addition of Oleic Acid to the composition at column 32, lines 46-50.

21. The method of claim 17, wherein the method comprises treatment of an allergic disease caused by HRF.

See claim 1.

22. The method of claim 21, wherein the allergic disease caused by HRF comprises at least one of asthma, urticaria, anaphylaxis, allergic rhinitis, allergic bronchiectasis, hay fever, atopic dermatitis and malaria.

See claim 1.

23. The method of claim 21, wherein the allergic disease caused by HRF comprises at least one of asthma, urticaria, allergic bronchiectasis, and atopic dermatitis.

See claim 1.

24. The method of claim 21, wherein the allergic disease caused by HRF comprises at least one of anaphylaxis, allergic rhinitis, and hay fever.

See claim 1.

37. A method of treating an allergic disease caused by IgE- dependent histamine-releasing factor (HRF) in a patient, wherein the allergic disease comprises at least one of asthma, urticaria, anaphylaxis, allergic rhinitis, allergic bronchiectasis, hay fever, atopic dermatitis and malaria and the method comprises administering to the patient an effective amount of a benzimidazole selected from the group consisting of omeprazole, lansoprazole, pantoprazole, and rabeprazole.

See claim 1.

39. The method of claim 37, wherein the method comprises an additional administration of at least one of fenoctimine, oleic acid, catechin, scopadulciol, pentagalloyl glucose, bufalin, bafilomycin and concanamycin.

See claim 20 and 37.

Even thought the prior art does not specifically point out the pathway the disease is treated, when treating the same disease with the same drug, then any later found pathway treated is inherent to the original method of treating the disease. Therefore, when BELANGER et al discloses adding omeprazole (column 35, lines 64-66) to a composition for the treatment of asthma and anaphylaxis (column 1 lines 18-22, column 1 lines 30-32, and claim 4), then the inhibition of the IgE-dependent histamine-releasing factor is inherently practiced. The purpose of adding omeprazole is irrevelant in 102 rejections, but what is important is that BELANGER discloses the composition to treat asthma.

Claims 17, 21, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Skinner-Adams et al, Synergistic In Vitro Antimalarial Activity of Omeprazole and Quinine, ANTIMICROBIAL AGENTS AND CHEMOTHERAPY, May 1999, p. 1304–1306 Vol. 43, No. 5.

25. The method of claim 21, wherein the allergic disease caused by HRF comprises malaria.

Skinner-Adams et al discloses the use of omeprazole as an anti-malarial agent (see first paragraph). Again, while the exact mechanism is not

known, when treating the same disease with the same drug, then any later found pathway treated is inherent to the original method of treating the disease.

Conclusion

Applicant's amendment dated 2/12/2007 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin J. Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-R 9-4:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

7 January 2008
BP

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614